

RESOLUTION NO.

A RESOLUTION OF PUBLIC USE AND NECESSITY OF THE COUNCIL OF THE CITY OF SAN JOSE MAKING CERTAIN FINDINGS AND DETERMINATIONS RELATING TO THE EXERCISE OF THE POWER OF EMINENT DOMAIN PURSUANT TO ARTICLE 2, CHAPTER 4, TITLE 7 OF PART 3 OF THE CALIFORNIA CODE OF CIVIL PROCEDURE FOR THE FOLLOWING PROJECT: THE ACQUISITION OF A PORTION OF REAL PROPERTY FOR PURPOSES OF WIDENING THE NORTH SIDE OF MONTAGUE EXPRESSWAY BETWEEN ZANKER ROAD AND ORCHARD DRIVE WITH A PORTION OF LAND OWNED BY FORTUNEFIRST LLC LOCATED AT 3101 NORTH FIRST STREET, SAN JOSE, CALIFORNIA (APN 097-06-054) COMPRISING 1,422.81 SQUARE FEET ; AND AUTHORIZING AND EMPOWERING THE CITY ATTORNEY TO FILE SUIT IN EMINENT DOMAIN TO ACQUIRE SUCH PROPERTY INTEREST, TO APPLY FOR AN ORDER FOR POSSESSION BEFORE JUDGMENT, AND TO PROSECUTE THE ACTION TO FINAL JUDGMENT; AND AUTHORIZING THE DEPOSIT OF MONEY IN THE STATE TREASURY CONDEMNATION FUND FOR POSSESSION OF THE PROPERTY FROM THE FUNDS LAWFULLY AVAILABLE THEREFORE

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:

SECTION 1. The Council of the City of San Jose hereby finds, determines and declares that:

- A. The public interest and necessity require the following proposed project: the acquisition by the City of San Jose of a portion of certain property located at 3101 North First Street, San Jose, being a portion of APN 097-06-054, as described in EXHIBITS "A" AND "B", attached hereto and by reference made a

part hereof, for the following project: MONTAGUE EXPRESSWAY WIDENING PROJECT.

- B. The proposed project is planned and located in the manner which will be most compatible with the greatest public good and least private injury.
- C. The acquisition of property described in Section 3 of this resolution (hereinafter "property") is necessary for the proposed project.
- D. The public project is the use to which the property is to be applied.
- E. The use is a use authorized by law.
- F. The taking of the property is necessary to such use.
- G. Prior to adopting this resolution of necessity, and prior to initiating negotiations for acquisition of the property, the City of San Jose established an amount of compensation not less than its approved appraisal of the fair market value of the property and made an offer to the owners of record to acquire the said property for the full amount, conditioned upon ratification of the offer by the City Council's execution of a contract and/or adoption of this resolution; and the offer conformed to the requirements of Government Code §7267.2.

SECTION 2. This Council hereby declares and states: The public use for which said property is to be taken is: the widening of Montague Expressway, the first segment funded for improvement pursuant to the North San Jose Area Development Policy, which identifies transportation improvements necessary to support development in North San Jose. The Montague Expressway Widening Project widens the north side of Montague Expressway between Zanker Road and Orchard Drive adding a west-bound high occupancy vehicle lane and sidewalk. The scope of the project also includes a dedicated right turn lane onto North First Street and a receiving lane for westbound traffic from North First Street onto Montague Expressway. Acquisition of a portion of the subject property is necessary to accommodate the proposed improvements. The area to be acquired will ultimately be conveyed to the County. The statutes which authorize the City of San Jose to acquire said properties by eminent domain are Sections 1240.010, 1240.110, 1240.120, 1240.125 and 1240.510 of the Code of Civil

Procedure, Sections 37350.5 and 40404 of the Government Code of the State of California and Section 200 of the Charter of the City of San Jose.

SECTION 3: The City of San Jose acquire a partial fee interest in the property described as follows for the project by proceedings in eminent domain in accordance with the provisions in Article I, Section 19, of the Constitution of the State of California, and the provisions of the laws and statutes of the State of California relating to eminent domain:

The real property described in EXHIBITS "A" and "B", attached hereto and by reference made a part hereof.

SECTION 4: The City Attorney of the City of San Jose be and is hereby authorized and empowered to institute, maintain and prosecute to final judgment, in the name of the City of San Jose, proceedings in eminent domain in the Superior Court of the State of California, County of Santa Clara, for the condemnation of the said property herein above described, and to take all steps necessary, including applying for an Order for Possession before Judgment, for the condemnation in the name of the City of San Jose.

SECTION 5. The Director of Economic Development Chief Strategist of the City of San Jose be and hereby is authorized and empowered to make deposit from lawfully available funds of the City of San Jose in the amount determined by the court

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in which eminent domain proceedings herein authorized are commenced or which may otherwise be required by law for the maintenance of the proceeding in eminent domain.

ADOPTED this 23rd day of August, 2011, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

CHUCK REED
Mayor

ATTEST:

DENNIS D. HAWKINS, CMC
City Clerk

EXHIBIT '___'

DESCRIPTION OF REAL PROPERTY

All that certain real property situated in the City of San Jose, County of Santa Clara, State of California, being a portion of Parcel 2 as shown on the Parcel Map filed for record on June 28, 1984 in Book 531 of Maps, at Pages 6-7, Records of Santa Clara County, more particularly described as follows:

Commencing at the northeasterly terminus of the northwesterly line of Montague Expressway, labeled as N 64°58'34" E 461.97 feet as described in the Grant Deed recorded on January 22, 1996 in Book P171 at Pages 2098-2102, Official Records of Santa Clara County, said point being 79.00 feet distant, measured at a right angle from the monument line of said Montague Expressway as described in said Grant Deed; thence parallel with said monument line of Montague Expressway, along the general northwesterly line of said Montague Expressway the following courses:

- S 64°58'34" W 126.33 feet to the Point of Beginning;
- S 64°58'34" W 335.64 feet to the beginning of a tangent curve to the right, concave northerly, having a radius of 40.00 feet;
- thence along said curve through a central angle of 75°31'21", for an arc length of 52.72 feet;

thence N 56°21'18" E 0.68 feet to the beginning of a non-tangent curve to the left, concave northerly, having a radius of 30.00 feet, a radial line to said point bears S 56°21'18" W; thence along said curve through a central angle of 81°21'38", for an arc length of 42.60 feet; thence N 64°59'40" E 263.87 feet to an angle point; thence N 68°11'56" E 80.30 feet to the Point of Beginning.

The described property contains approximately 1,422.81 square feet (0.03 acres).

This description was prepared from record information and a limited field survey.

EXHIBIT A

EXHIBIT '___',

The Basis of Bearings for this description is the bearing of N 64°58'34" E for the monument line of Montague Expressway as shown on the Parcel Map recorded on June 28, 1984 in Book 531 of Maps at Pages 6-7, Records of Santa Clara County.

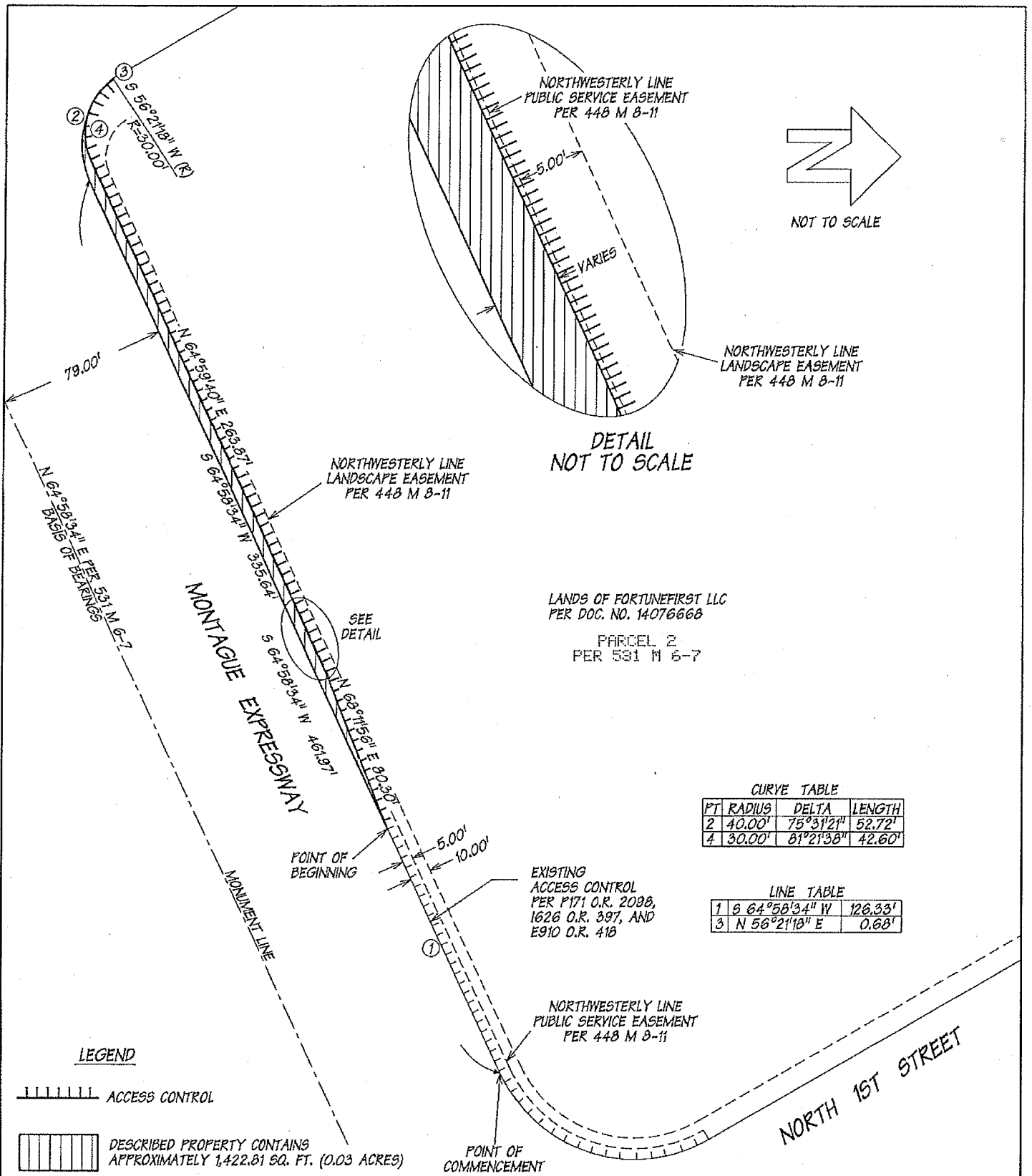
Attached hereto and by reference a part hereof is a plat labeled "PLAT TO ACCOMPANY DESCRIPTION OF REAL PROPERTY" depicting the subject property.

The above description of real property was prepared by me in conformance with the requirements of Section 8726(g,k,l,m) of the Business and Professions Code of the State of California.



Patricia A. Cannon 12/15/2010

Patricia A. Cannon, PLS 8186



10-133

EXHIBIT B

PREPARED BY
CITY OF SAN JOSE
SURVEY SECTION
DECEMBER 15, 2010